

**FISCAL YEAR 2012  
CONGRESSIONAL BUDGET JUSTIFICATION  
AND PERFORMANCE BUDGET GOALS**



**U.S. Office of Special Counsel**

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## **PART 1 – EXECUTIVE SUMMARY**

In matters ranging from: protecting passengers in the nation's air travel, protecting our borders, rooting out corruption, identifying waste in federal contracting and grants, correcting discrimination against service members returning from duty, or disciplining high level officials for whistleblower retaliation and use of official authority to affect elections; the U.S. Office of Special Counsel has fulfilled its role as an independent prosecutorial and investigative agency charged with bringing greater integrity and efficiency to the merit system. Granting this budget request will assist this independent agency in its mission to discover and combat fraud, waste, and abuse of authority. It will send the message that this agency is important to the healthy functioning of the United States, and that we honor and support those who bring these matters to light.

In last year's budget justification, OSC reported how the agency had continued to enhance its protection of the merit system and to provide responsive assistance to aggrieved federal employees. In addition to the individual case outcomes that resulted, many successes were achieved: improving aviation safety, providing relief for military service members under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and continuing vigorous protection of federal whistleblowers. From FY 2008 and into FY 2009, through effective management of resources, OSC prevented a backlog of cases. Our core program areas of Investigation and Prosecution of Prohibited Personnel Practices, Hatch Act Enforcement, Whistleblower Disclosure Unit and USERRA Enforcement and Prosecution were strengthened during this time. Moreover, from FY 2009 and into FY 2010, we continued to see a significant increase in the incoming caseloads. Most notably there are marked increases in the Whistleblower Disclosure cases and the Hatch Act cases. Managing Hatch Act cases in the upcoming Presidential election year, when cases are expected to spike, will be of elevated importance in order to maintain the boundaries between the civil service and their involvement in partisan politics. Furthermore, OSC has received the new USERRA Veterans Demonstration project, which was recently passed as part of the Veterans Benefits Improvement Act of 2010. OSC has managed to implement efficient processes and workload balancing that have enabled us to stay current with the rising workload. However the resource levels requested for FY 2012 are required in order for OSC to keep up the operational tempo needed to fulfill our growing mission. To do otherwise would negatively impact our ability to fulfill our role, since case backlogs would rise significantly and cause delays in case processing.

### **OSC's Mission**

The U.S. Office of Special Counsel's primary mission is to safeguard the merit system in federal employment by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency operates a secure channel for federal whistleblower disclosures of violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces the civilian employment and reemployment rights of military service members under the USERRA.

### **Summary of Request**

OSC is requesting \$19,486,000 in FY 2012. This amount includes funding for the salaries and benefits of the agency's 112 FTE, and also includes funds to cover the agency's increases in rent and services.

## Continuing Trend of Rising Receipts of Cases

In the past several years, the agency has experienced significant year-after-year increases in caseload levels. For example, in FY 2008, OSC's overall caseload increased 8.0%, in FY 2009 the overall caseload jumped 19.5%, and in FY 2010 the caseloads increased 6% further. The most pronounced increases are in the Whistleblower Disclosure and Hatch Act Program areas. Several factors which have contributed to these rising levels of complaint filings with OSC include:

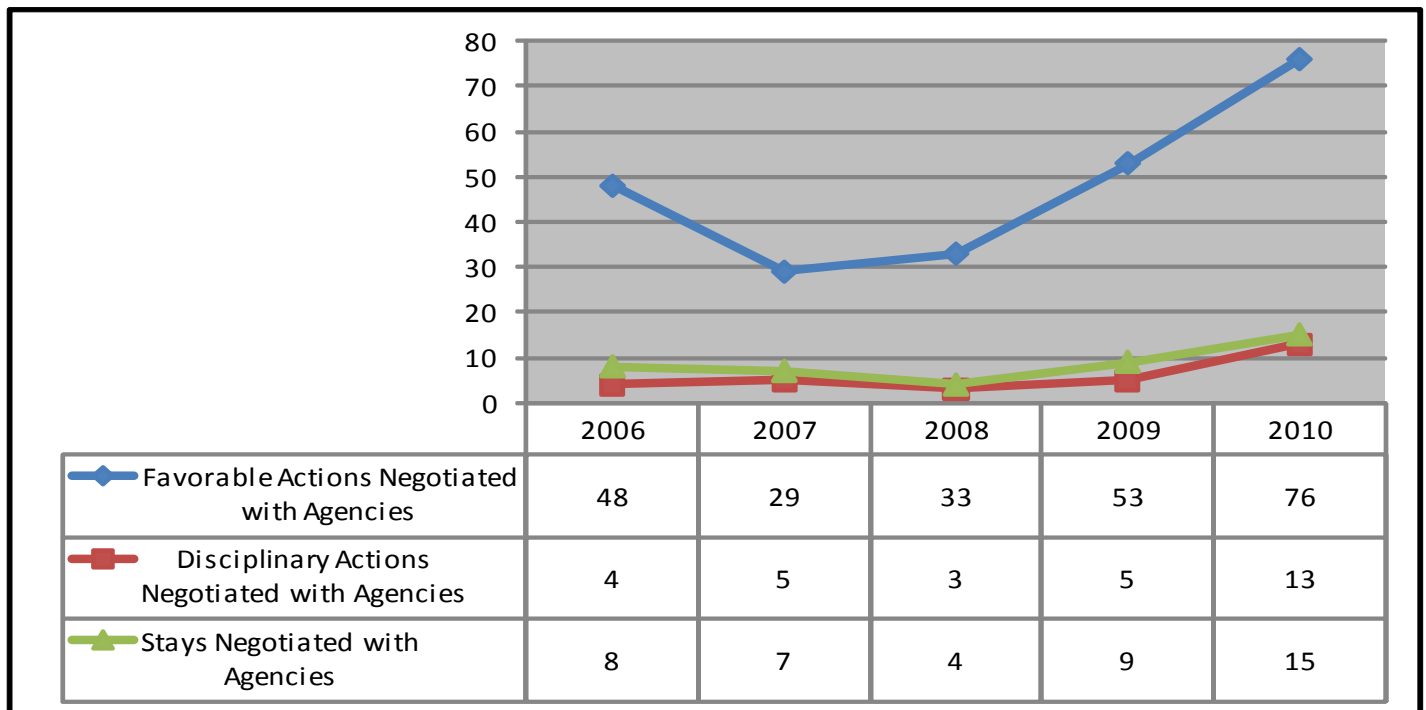
Press coverage of OSC has continued to increase in recent years. Also, OSC's outreach program has continued to build awareness within the Federal community. During FY 2009, OSC received 724 Whistleblower disclosures, which was a 37% increase, and FY 2010 brought 961 Disclosures, a further 33% increase.

Awareness of the Hatch Act along with OSC's role has continued to build among Federal employees, primarily due to media coverage. The number of Hatch Act complaints received in FY 2010 was a 6% increase over the prior year which had already brought record levels of Hatch Act cases. Hatch Act complaints received increased in the 2010 mid-term election year, and are expected to continue to increase and elevated levels continuing through the Presidential Election Cycle. Further, the Advisory opinions OSC issued in FY 2010 increased to 4,320, a 16% jump from the prior year, with a notable 42% increase in Formal Advisory opinions that were issued.

## Graphical Highlights of OSC's Operations

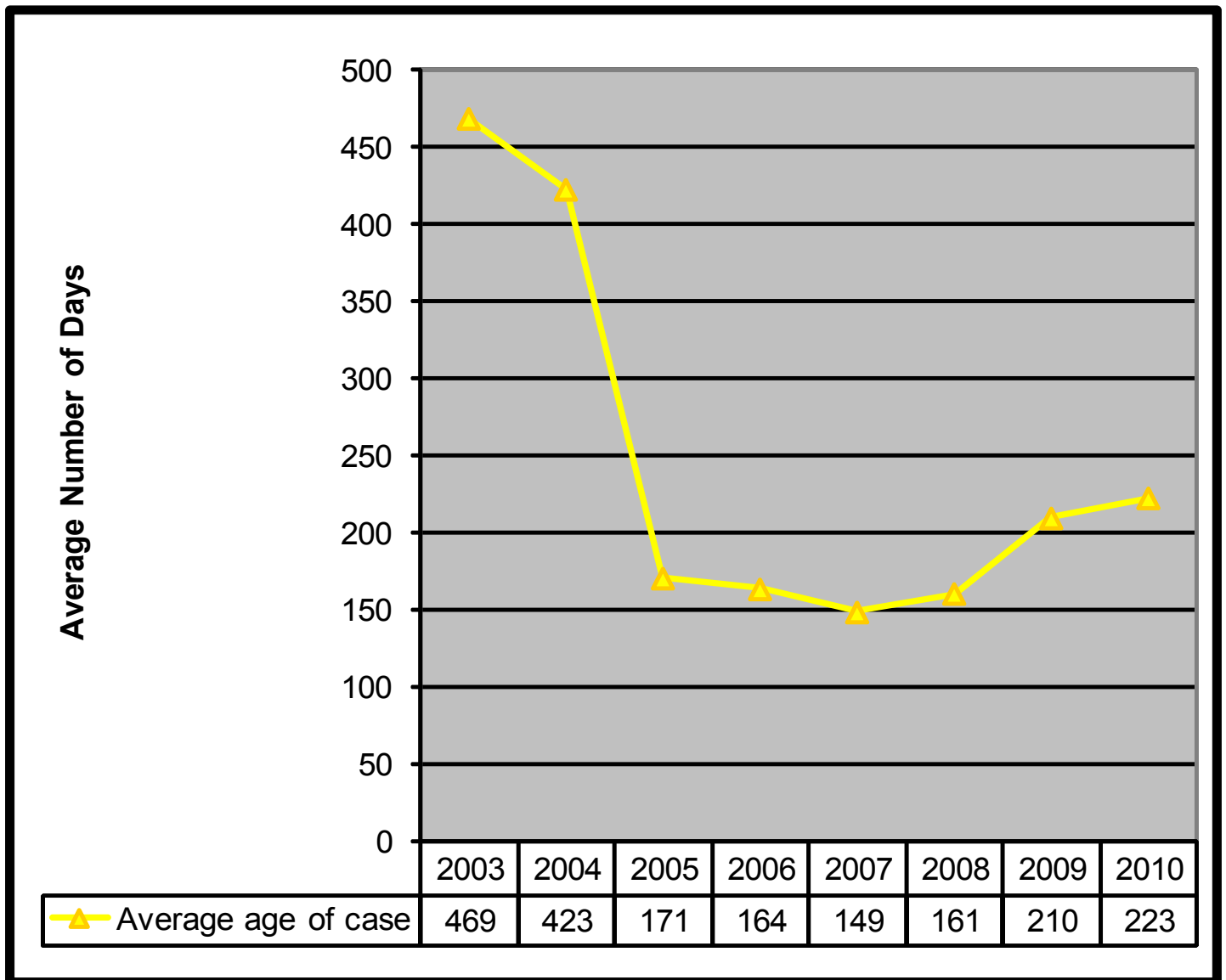
The graphs below are intended to help display and explain trends from OSC's program areas.

### PPP Division - Favorable and Disciplinary Actions, and Stays



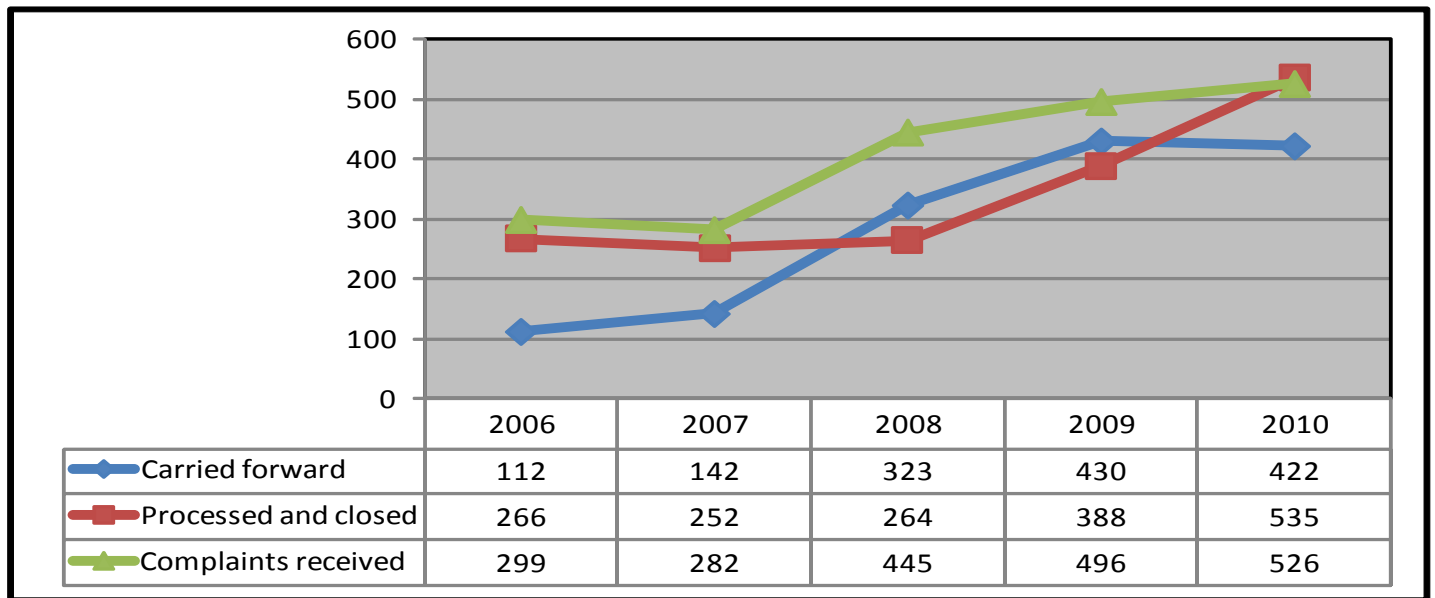
This chart shows the key outcomes achieved by OSC in the Prohibited Personnel Practices area. Already on a positive trendline upwards, new record levels of these outcomes were achieved in FY 2010.

### Hatch Act Unit- Average Processing Time per Complaint



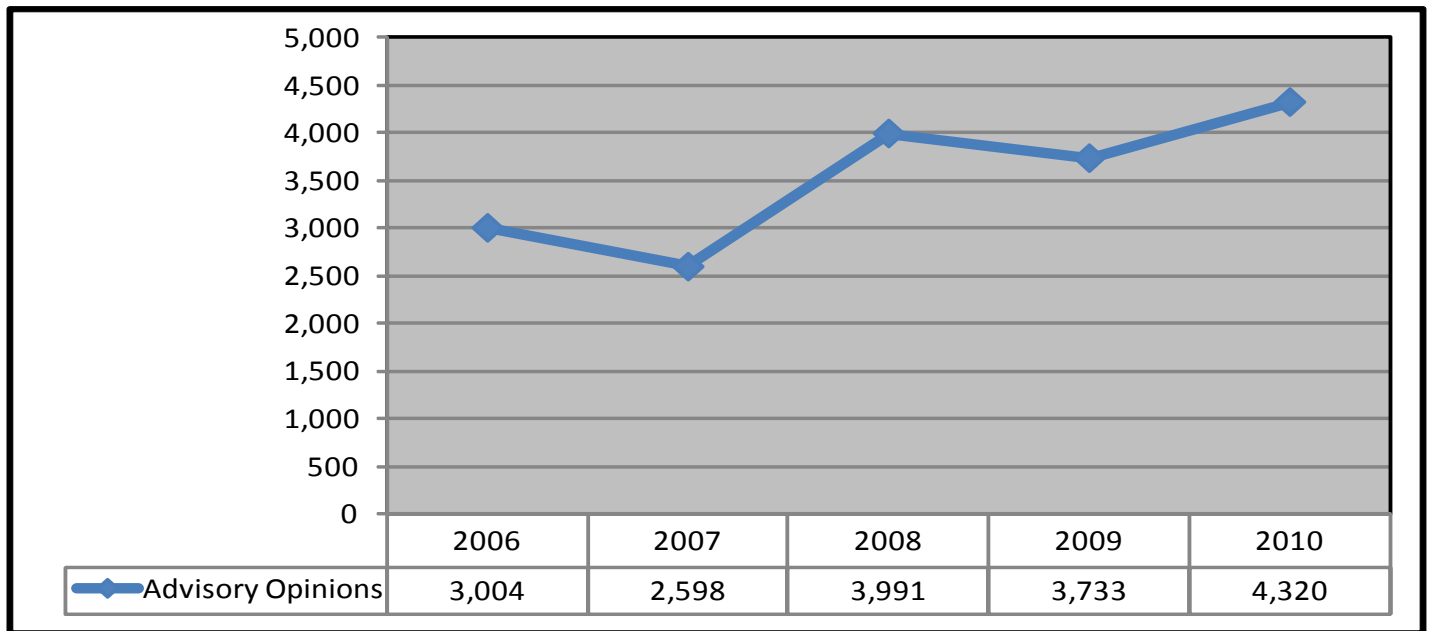
OSC's Hatch Act Unit had reduced its case processing time dramatically from 2003 to 2007. However, due to the large increase in the number of Hatch Act cases received, the average processing time per complaint is rising.

## Hatch Act Unit - Carried Forward, Processed, and Received



In FY 2009, and also continuing in FY 2010, given that the number of complaints received has increased by 187% since FY 2007, the number of complaints pending at the end of the year has risen to significant levels.

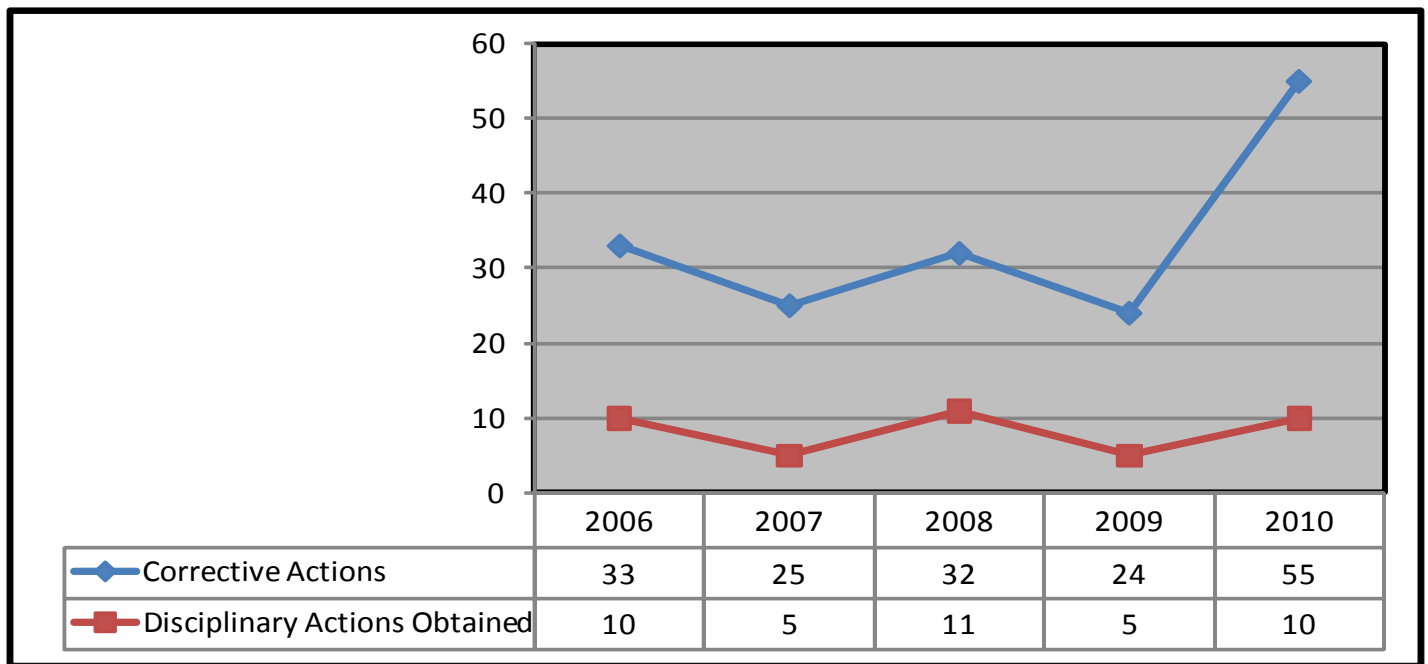
## Hatch Act Unit - Advisory Opinions



Hatch Act Advisory opinions are a significant component of the Hatch Act Unit's workload. The advisory opinions have risen by 66% since 2007, and increases are expected through the FY 2012 Presidential Election Cycle.

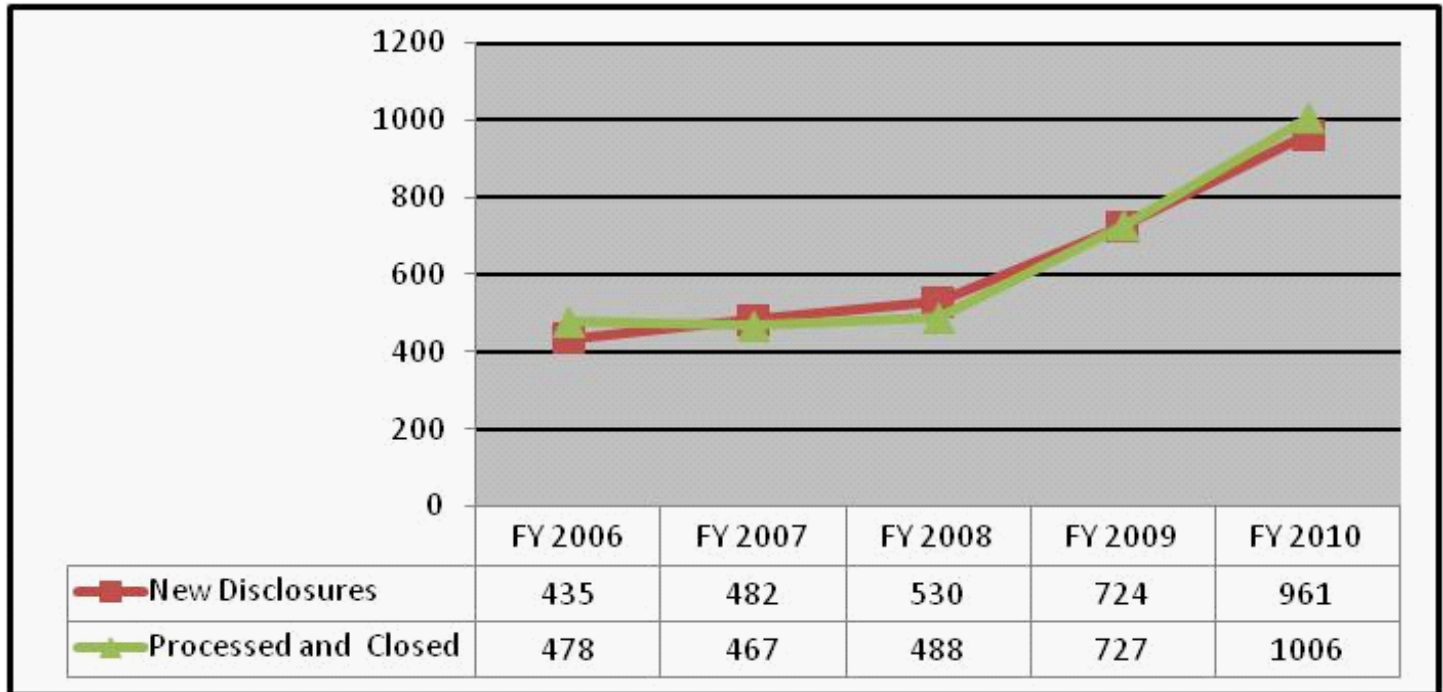


## Hatch Act Unit - Corrective and Disciplinary Actions



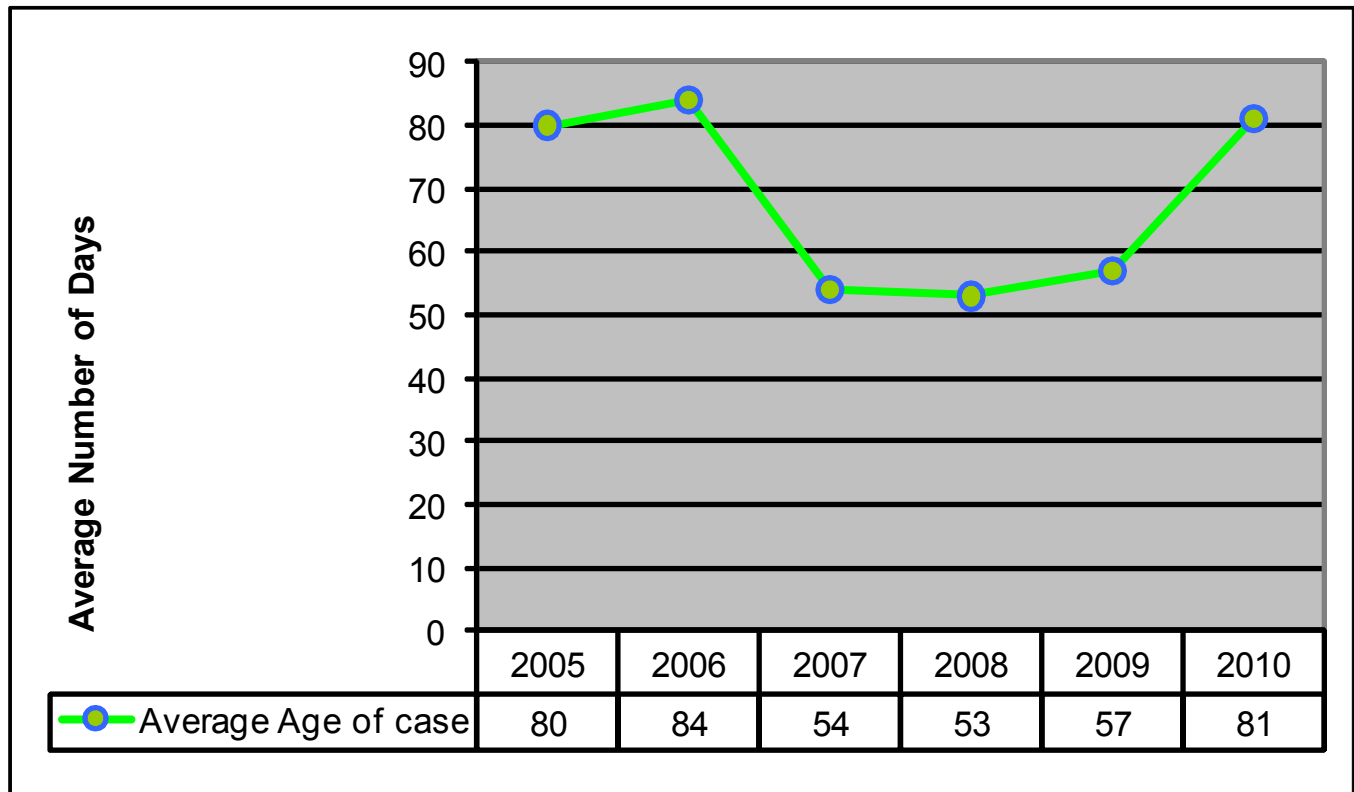
The Hatch Act unit achieved a more than doubling of a key outcome, Corrective Actions, in the past year.

## New and 'Processed and Closed' Disclosure Unit Cases



The Whistleblower Disclosure Unit has seen increases in cases of 37% and 33% in FY 2009 and FY 2010 respectively. Despite these large increases, the Unit has been able to keep pace with the workload by operating at a high tempo and gaining additional productivity out of current employees.

### Disclosure Unit - Average Processing Time per Disclosure



This chart shows the average processing time per Disclosure, which was 81 days in FY 2010. Though the Disclosure Unit is operating more efficiently and closing significantly more cases, the average processing time is increasing, due to an 81% increase in new Disclosures since FY 2008.

## **OSC'S SUCCESSES IN FY 2010**

- 1) Enforcing veterans' job rights under USERRA.** OSC achieved an important precedent in *Silva v. DHS* when the MSPB accepted its argument that a federal agency can be held liable for violating the USERRA rights of a federal contractor (not just an employee). OSC also filed another case of first impression before the MSPB involving initial hiring discrimination under USERRA that should help define agencies' obligations to service members who are selected for employment but unable to report on the agency's preferred start date, due to military duty.
- 2) Federal Aviation Administration (FAA) Oversight and Aviation Safety.** OSC continues its work on a number of whistleblower disclosures involving allegations of dangers to aviation safety. Investigations conducted as a result of OSC referrals substantiated allegations that in some instances, air traffic was managed in an unsafe manner, that FAA oversight was inadequate and that FAA officials misused the Voluntary Disclosure Reporting Program (VDRP). The Department of Transportation (DOT) found that Detroit Metropolitan Airport operated an approach and departure configuration, known as the "Southwest Flow," which was unsafe and violated FAA Order 7110.65, and that an Operations Manager knowingly allowed the non-compliant operation for two months. DOT also concluded that airport managers provided Senator Carl Levin a disingenuous response to his inquiry into the matter. The airport ceased operation of the Southwest Flow, counseled airport managers, and FAA sent a letter to Senator Levin in April 2008 clarifying its response. In another case, DOT substantiated whistleblower allegations that two supervisory inspectors failed in their oversight responsibilities by violating FAA's VDRP and improperly permitting United Airlines to self-disclose noncompliance with an Airworthiness Directive (AD) after the noncompliance had been discovered by the whistleblower. In a third case, DOT substantiated allegations that FAA officials knowingly allowed Southwest Airlines to self-disclose a violation of an AD, and to operate aircraft in passenger revenue service in an unsafe or un-airworthy situation and in violation of Title 14 of the Code of Federal Regulations and the VDRP. In response, FAA took disciplinary action against the employees found to be responsible.
- 3) Protecting the Health of Federal Employees.** OSC completed a referral involving allegations that air traffic controllers at Detroit Metropolitan Airport were suffering severe health problems from mold in the control tower. The DOT investigation found that previous attempts to resolve the mold and moisture problems in the control tower were unsuccessful. Following OSC's referral, DOT reinstituted the inspection and remediation process and planned to conduct an employee health survey of current and former air traffic control tower employees.
- 4) Improving Safety at Construction Sites and Heavy Machinery.** The Department of the Navy substantiated an OSC referral that employees at the Naval Surface Warfare Center in Bayview, Idaho violated Naval regulations and local facility instructions when they failed to report damage to a crane and kept the damaged crane in operation without testing or recertification. The Navy inspected the crane and related equipment, completed the required accident report, changed the procedures used to deploy equipment, counseled all employees involved in the January 2009 accident and required all those involved to attend training on the use of cranes.
- 5) DoD Confirms Misuse of Agency Funds.** OSC completed a disclosure case referred to the Secretary of Defense regarding allegations that Department of Defense (DoD) employees were improperly using the fees collected for Information Analysis Center (IAC) programs for unrelated DoD functions and activities. The whistleblower also disclosed that employees failed to report the IAC monies and implemented faulty policies to justify their misuse of the funds. The DoD investigation found that employees violated the Economy Act, 31 U.S.C. § 1535, and inappropriately augmented DoD's budget. The investigation also partially substantiated the allegation that DoD failed to report the IAC monies and determined that the then-Administrator of the IAC

program engaged in gross mismanagement. As a result, the Administrator was removed from his position. DoD also established an IAC Reimbursable Review Board, will update its Financial Management Regulations and conduct a study in FY 2011 to ensure compliance with its reporting requirements.

**6) Exposing Deficiencies in FAA's Drug Testing Regulations.** OSC completed a disclosure case referred to the Secretary of Transportation regarding allegations that the Federal Aviation Administration (FAA), Drug Abatement Division's (Drug Abatement) procedures for investigating violations of FAA's drug testing program regulations were deficient and resulted in a substantial and specific danger to public safety. The whistleblower disclosed an incident where a mechanic continued to perform safety-sensitive maintenance for a certificate holder after he tested positive for cocaine in a pre-employment drug test conducted by another certificate holder, and the positive drug test result was reported to, and investigated by, Drug Abatement. After an accident involving an aircraft operated by the certificate holder employing this mechanic, FAA discovered the mechanic was working in violation of the regulations and had performed maintenance on the aircraft that crashed.

DOT confirmed that this incident highlighted critical deficiencies in Drug Abatement's procedures for investigating violations of FAA's drug testing program regulations. According to the report, Drug Abatement staff was not familiar with a change in policy permitting FAA to report positive drug test results to multiple employers. The report also found that disparities between the requirements for pilots and mechanics concerning certificate verification and reporting of drug and alcohol violations pose a "potential threat to safety." FAA reiterated its new policy concerning the sharing of drug and alcohol violations with employers, and pledged to give full consideration to the disparities between pilot and mechanic requirements during Drug Abatement's Rulemaking Project.

**7) Protecting Employees from Retaliation.** OSC continues to obtain corrective actions for employees who have suffered retaliation for whistleblowing and for engaging in other protected activity. In one such case, the whistleblower, a supervisory financial analyst with the U.S. Forest Service, disclosed that the Chief Financial Officer had misused his government travel card. The whistleblower alleged that he was not selected for a promotion because of his protected whistleblowing. After OSC's investigation into the matter, the agency agreed to settle the case by paying the whistleblower a lump sum of \$30,000. In another case, the whistleblower, a National Park Service (NPS) employee, disclosed to a Park Superintendent that his supervisor had illegally used government fuel for his personal vehicle. The whistleblower alleged that he was denied an appointment as Park Ranger because of his protected whistleblowing. OSC informed NPS of its findings and successfully negotiated corrective action on the whistleblower's behalf. NPS agreed to pay the whistleblower \$50,000 in back-pay.

**8) Increased Rates of Investigation.** Of the new PPP complaints received in FY 2010, 10% have been referred for full field investigations, up from 8%. The review and referral of these cases has been completed on average in less than 90 days. Altogether, we have been able to achieve a new level of timeliness and thoroughness of review of new complaints.

**9) Prohibited Personnel Practice Prosecutions-Formal Disciplinary Action.** A significant investigation by OSC resulted in 45-day and 10-day suspensions for two Department of Homeland Security Coast Guard Human Resources (HR) specialists. OSC filed two disciplinary action complaints before the Merit Systems Protection Board (MSPB). The MSPB found that both HR specialists violated one provision of the Civil Service Reform Act; the prohibition against granting an unauthorized preference or improper advantage during the hiring process for the purpose of giving advantage to a candidate for a GS-11-1801-11 Supervisory Merchant Marine Specialist position in Long Beach, California. The HR specialists had three separate vacancy announcements issued before they were able to qualify management's preferred GS-8 level candidate. The final vacancy

announcement redefined the manner or scope of competition by changing the grade of the position to GS-9 with promotion potential, and included a requirement that applicants have licensing experience, the preferred candidate's specialty. The MSPB concluded that the two HR specialists intentionally assisted the selecting official, a Coast Guard uniformed servicewoman, in granting an illegal preference to the preferred candidate, and ordered their suspension without pay.

10) **Two Prohibited Personnel Practice Matters that Resulted in both Corrective and Disciplinary Actions.** One OSC investigation resulted in two supervisors from the U.S. Department of Transportation (DOT), Federal Aviation Administration, receiving letters of counseling. OSC found that the supervisors improperly suspended a subordinate (the complainant) for three days, in part, for his threat to report the supervisors to the DOT Inspector General for having given a decertified air traffic controller an undeserved "satisfactory" performance rating. OSC successfully negotiated the cancellation of the complainant's three-day suspension and pay reimbursement, a one-year detail to the Air Traffic Control Academy, and payment of attorney's fees. Another OSC investigation resulted in a former acting medical center director receiving a letter of counseling. OSC found that the former director had improperly implemented a rule that employees who had worked at the facility for less than one year could not earn an overall summary performance rating higher than "Fully Successful." OSC obtained corrective action for five employees at the facility, including upgraded summary performance ratings, increased annual performance awards, and a letter of apology from the medical center director. Finally, the region issued a directive to all regional medical centers to cease using this rule and it conducted a training session at this medical center for supervisors concerning performance management.

11) **Obtaining Relief for an Employee Discriminated Against Based on Political Affiliation.** Another significant investigation by OSC resulted in corrective action for the complainant, an applicant for a position with the U.S. Election Assistance Commission (EAC). OSC's investigation uncovered evidence indicating that two EAC Commissioners illegally blocked the approval of the complainant's appointment to the agency's general counsel position because of the complainant's political affiliation. In lieu of taking the general counsel position, the complainant accepted a substantial lump sum payment.

12) **Clarification of OSC's responsibilities.** The Complaints Examining Unit (CEU) developed a Matrix which outlined OSC's jurisdiction over various Government agencies/entities. This Matrix addresses the following: 1) whether Title 5 is applicable to a particular agency, employees of a particular agency, or positions within a particular agency; 2) the personnel actions over which OSC has jurisdiction to investigate; and 3) the legal citation and/or case law that establishes, restricts, or prohibits our investigative jurisdiction. CEU also updated all of its standard language paragraphs based on the completed Matrix.

13) **Increased Hatch Act Investigation and Litigation.** As a result of the considerable increase in both the number and seriousness of Hatch Act violations by federal employees during the 2008 Presidential election, and the recent midterm elections, the Hatch Act Unit continues to generate increased investigative and litigation activity at OSC. A number of these violations involve federal supervisors coercing subordinates to engage in political activity and federal employees soliciting political contributions or advocating the success or failure of candidates via e-mail while at work.

Due to an increased awareness of the Hatch Act at the state and local level, the Hatch Act Unit also continues to see a rise in complaints involving state and local employees; a large number of recent complaints involve the alleged abuse of official authority, which will require onsite investigations. For example, the Hatch Act Unit recently conducted an onsite investigation of a North Carolina Sheriff who invited subordinate employees to a meeting for his reelection campaign by placing fliers in their mailboxes; the purpose of the meeting was to distribute yard signs, collect contributions, and discuss ways to assist his campaign.



Another example at the federal level includes a lengthy investigation into a Supervisory Special Agent of the FBI who asked subordinate employees to volunteer for a family member's political campaign by handing out fliers on weekends, and at polling locations. As further restricted employees under the Hatch Act, the subordinates who agreed engaged in activity prohibited by the Hatch Act. The Hatch Act Unit also investigated an Assistant United States Attorney who solicited and accepted political contributions from subordinate employees; this activity occurred during the performance evaluation period. A number of the investigations completed by the Hatch Act Unit have resulted in enforcement actions before the MSPB.

14) **Hatch Act Disciplinary Actions brought before the Merit Systems Protection Board.** During fiscal year 2010, the Hatch Act Unit filed ten complaints for disciplinary action with the MSPB, with more to be filed soon. For example, one case was filed against a high level federal employee who, while on duty and in the federal workplace, prepared speeches, web site content, and other written material for the Obama campaign. OSC also filed a complaint against a VA doctor who, while on duty and in her federal workplace, disseminated political e-mails to subordinate employees and patients urging them to vote for a particular candidate. Subsequent to filing the complaint, the case was settled for a 90-day suspension without pay. In addition, OSC filed a complaint against a Contracting Officer Technical Representative with the Bureau of Engraving and Printing who solicited political contributions from co-workers and contract employees, while on duty and in her federal workplace; the COTR disseminated two e-mails, one of which was an invitation to a campaign fundraiser for then-Presidential candidate Barack Obama. The other encouraged donations to Obama's campaign through a slide presentation. Although the contract employees were not direct subordinates, the COTR's duties included the monitoring, documenting, and evaluation of contractors' overall performance both during the contract and at the contract's end. The MSPB ordered the employee removed for her violations.

In another case, OSC filed a complaint against an IRS employee who disseminated a fundraising e-mail to approximately 44 recipients, requesting campaign contributions for then-Presidential candidate Obama. The MSPB ordered that the employee receive a 120-day suspension without pay for his violation.

OSC also filed a complaint against a 30-year federal employee who composed and disseminated e-mails, while on duty and in her federal workplace, urging readers to make political contributions and attend a campaign fundraiser at her home. Despite warnings from her ethics coordinator to cancel the fundraiser, the employee held the event; one year later she again violated the Hatch Act by making a financial contribution to then-Presidential candidate Barack Obama's campaign while on duty and in her federal workplace. In an initial decision, the administrative law judge found that the employee should be removed for her violations.

Another VA employee resigned after a complaint was filed with the Board identifying over thirty political e-mails sent while the employee was on duty and in her federal workplace. Even though she resigned, the Board retained its jurisdiction, found that removal was the appropriate penalty, and ordered that a copy of the finding be placed in the employee's official personnel file.

OSC also filed a complaint against a VA doctor who sent an e-mail invitation while on duty and in his federal workplace to several individuals (including subordinates) for a political event for Presidential candidate John McCain. This same VA doctor, after receiving notification of his violation, and while OSC was conducting an onsite investigation, sent another e-mail soliciting contributions for a candidate running for state office. An administrative law judge found him in violation and ordered his removal from employment. The employee appealed the decision, which is pending before the MSPB.

In another case, after extensive litigation, an administrative law judge recommended the removal of a police chief who, despite receiving OSC guidance that he was covered by the Hatch Act, pursued a candidacy for public office in a partisan election. This case is also on appeal before the MSPB.

OSC also filed a complaint against a Postal Service employee for running as a candidate in a partisan election. Subsequent to filing the complaint, the case settled and the employee received a thirty-day suspension without pay.

In addition, OSC filed a case against a GSA employee who sent several e-mails advocating support for then-Presidential candidate Obama and soliciting contributions for his campaign. The parties subsequently agreed to settle the matter, and the employee received a sixty-day suspension without pay.

15) **Hatch Act Disciplinary Action Obtained Through Informal Settlement.** Several significant Hatch Act investigations resulted in disciplinary action through informal settlement. For example, the executive director of a state agency was suspended for sixty days without pay for inviting her staff to a fundraiser and a federal employee was suspended for thirty days without pay for forwarding several political e-mails while on duty and in his federal workplace. Another case involving a federal employee who sent a partisan political e-mail while at work settled for a 45-day suspension. In addition, a federal regulatory division chief with the U.S. Army Corps of Engineers resigned from his employment as a result of settlement negotiations.

16) **Other Hatch Act Enforcement Activity.** The Hatch Act Unit is responsible for a nation-wide program that provides federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act, enabling individuals to determine whether they are covered by the Act, and whether their contemplated activities are permitted under the Act. Specifically, the Hatch Act Unit has the unique responsibility of providing Hatch Act information and legal advice to White House and congressional offices; cabinet members and other senior management officials throughout the federal government; state and local government officials; and the media. As the only unit authorized by law to issue legal advice to persons outside the agency, the Hatch Act Unit issues all OSC advisory opinions. During FY 2010, the Hatch Act Unit has seen a large increase in the volume and complexity of these requests, including the analysis of new political movements like the Tea Party and The American Revolution of 2010, and the application of the Hatch Act to social media outlets like Twitter and Facebook. The Hatch Act Unit also worked closely with the White House to provide Hatch Act guidance and provided numerous outreach programs for both federal and state/local employees subject to the Act. In total, the Hatch Act Unit has issued 4,320 advisory opinions (written, oral, and e-mail) during FY 2010.



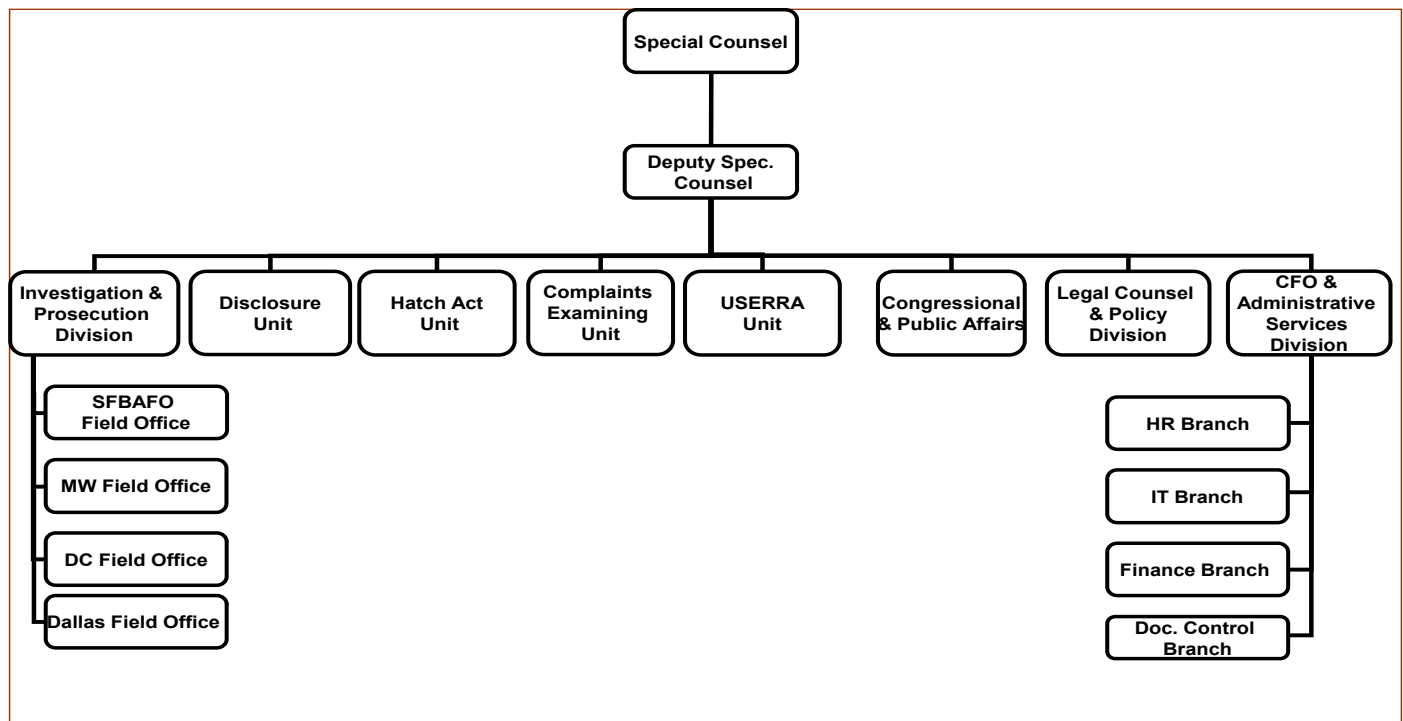
**Strategic Objectives**

OSC has four strategic objectives (see table below), each of which is supported by a series of performance goals. These performance goals are described in Part 3, in the appropriate section for each budget program.

<b>Strategic Objectives of the Agency</b>	
<b>U.S. Office of Special Counsel</b>	
<b>Strategic Objective 1</b>	OSC will protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the Prohibited Personnel Practices.
<b>Strategic Objective 2</b>	OSC will protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act.
<b>Strategic Objective 3</b>	OSC will promote public safety, and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information.
<b>Strategic Objective 4</b>	OSC will protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act.

## Internal Organization

OSC ORGANIZATIONAL CHART



OSC maintains a headquarters office in Washington, D.C., and four field offices (located in Dallas, Detroit, Oakland, and Washington, D.C.). Agency components during FY 2009 and FY 2010 included the Immediate Office of the Special Counsel, five program/operating units, and several support units (described further below).

**Immediate Office of the Special Counsel (IOSC).** The Special Counsel and the IOSC staff are responsible for policy-making and overall management of OSC. This encompasses management of the agency's congressional liaison and public affairs activities, and coordination of its outreach program. The latter includes promotion of compliance by federal agencies with the employee information requirement at 5 U.S.C. § 2302(c). This office is currently vacant while we await appointment of a Special Counsel. In the interim the responsibilities are performed by the agency's career employees.

### Program Units

**Complaints Examining Unit (CEU).** This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction. CEU screens approximately 2,400 such complaints each year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation or possible mediation.

**Investigation and Prosecution Division (IPD).** IPD is comprised of the four field offices, and is generally responsible for conducting field investigations of matters referred after preliminary inquiry by CEU. In selected cases referred by CEU for further investigation, IPD coordinates mediation of complaints in which the complainant and the agency involved have agreed to participate in OSC's voluntary Alternative Dispute Resolution

(ADR) Program. In other cases, after field investigation of matters referred by CEU, legal analyses are done by IPD attorneys to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. IPD investigators work with the attorneys in deciding whether a matter warrants corrective action, disciplinary action, or both. If meritorious cases cannot be resolved through negotiation with the agency involved, the attorneys represent the Special Counsel in litigation before the MSPB. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, IPD investigators and attorneys assist the Hatch Act Unit and the USERRA Unit, as needed, with cases handled by those components.

**Disclosure Unit (DU).** This component receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the agency involved for investigation and a report to the Special Counsel; informal referral to the Inspector General (IG) of the agency involved; or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness before the Special Counsel sends the report to the President and responsible congressional oversight committees, along with any comments by the whistleblower and the Special Counsel.

**Hatch Act Unit (HAU).** This unit investigates complaints and enforces the Hatch Act. It represents OSC in litigation before the MSPB seeking disciplinary action for alleged Hatch Act violations. In addition, the HAU is responsible for providing legal advice on the Hatch Act to federal, D.C., state and local employees, as well as the public at large.

**USERRA Unit.** This component reviews USERRA cases referred by the Department of Labor (DOL) to OSC for legal representation of the claimant before the MSPB, if warranted.

## **Support Units**

**Legal Counsel and Policy Division.** This division serves as OSC's office of general counsel, and provides policy advice and support to the agency. The division's responsibilities include provision of legal advice and support in connection with management and administrative matters; defense of OSC interests in litigation filed against the agency; management of the agency's Freedom of Information Act, Privacy Act, and ethics programs; and policy planning and development.

**CFO and Administrative Services Division.** This office manages OSC's budget and financial operations, and accomplishes the technical, analytical and administrative needs of the agency. Component units are the Budget, Finance and Procurement Branch, Human Resources and Document Control Branch, and the Information Technology Branch.

## Budget by Program

The following table provides an estimate of the FTE and budgetary resources for each program.

<b>FY 2012 Budget by Program</b>						
(in thousands of dollars)						
Program	FY 2011 Estimate*		FY 2012 Estimate		Increase/Decrease	
	\$	FTE	\$	FTE	\$	FTE
Investigation and Prosecution of Prohibited Personnel Practices	\$9,130	55	\$9,324	56	\$194	1
Hatch Act Enforcement	\$2,475	15	\$2,490	15	\$15	0
Whistleblower Disclosure Unit	\$2,040	12	\$2,223	13	\$183	1
USERRA Enforcement and Prosecution	\$495	3	\$664	4	\$169	1
Office of the Special Counsel	\$443	4	\$680	4	\$237	0
Office of the Agency General Counsel	\$680	5	\$855	5	\$175	0
Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities	\$3,232	15	\$3,250	15	\$18	0
<b>totals</b>	<b>\$18,495</b>	<b>109</b>	<b>\$19,486</b>	<b>112</b>	<b>991</b>	<b>3</b>

\*The FY 2011 estimate listed is based upon a full year level of the Continuing Resolution. The President's Budget level for OSC in FY 2011 is \$19,486,000.

## **PART 2 - FY 2012 BUDGET REQUEST – ADDITIONAL INFORMATION**

OSC is requesting \$19,486,000 in FY 2012, which includes funding for the salaries, benefits, rents and increased expenses for a staff of 112 FTE's. This level provides for three new FTE's, and breaks down into 108 career staff and the agency's four expected political staff, which will be onboard in FY 2012 for the first full year. This number of FTE is required to manage the agency's increasing workload of prohibited personnel practice complaints, whistleblower disclosures, Hatch Act complaints and advisory opinions, and USERRA cases in a manner that prevents the formation of case backlogs. Significantly, OSC will be managing the work of the new USERRA Demonstration project in FY 2012 for the first full year. Overall, the workload has steadily increased since 2000, and sharply increased by 27% in the past two years.

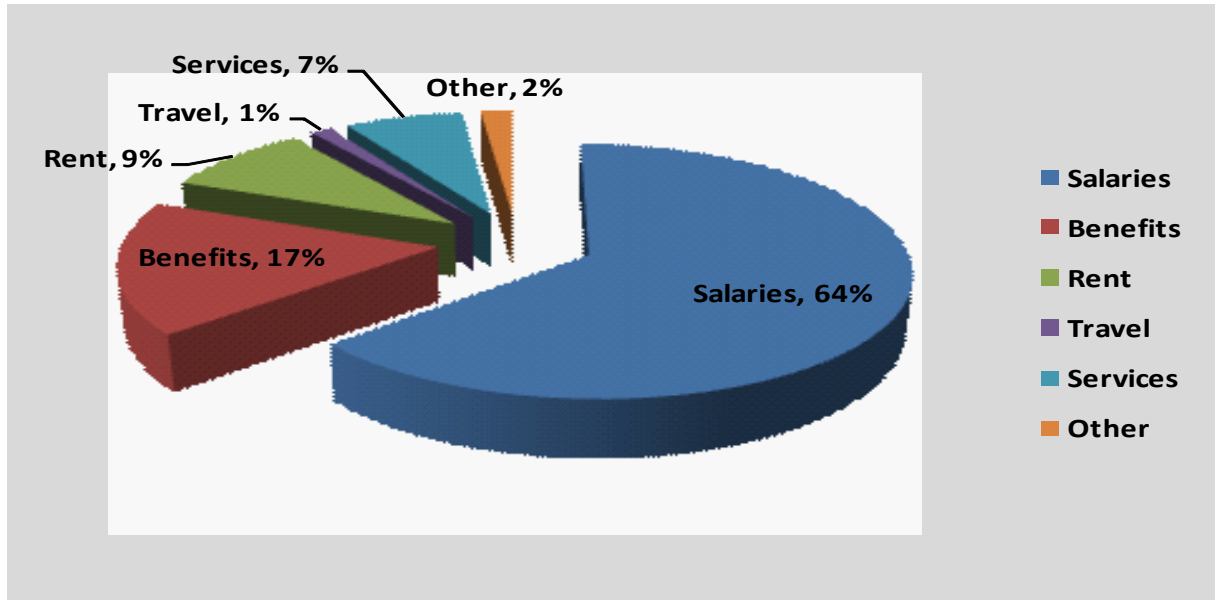
### **Budgetary Factors**

Over 90% of OSC's budget goes toward salary, benefits and office space rent. In addition to those costs, several increased expenses are expected in FY 2012 as well.

1. Increased costs for salaries and benefits. For the first time in several years, OSC will have a full political staff of approximately four to five employees during FY 2012. Given the continued rapid increase in case-loads and the fact that four of OSC's 112 FTE will be used for political staff, it is imperative that OSC operate with 108 career employees during all of FY 2012. In sum, OSC will need sufficient funding to support its full staffing level of 112 FTE, including the projected within-grade increases and career ladder promotions that will occur during the year.
2. Increased Expenses: OSC will see increases in the areas of rental payments to GSA, communications and utilities, and other services. Lease payments to GSA will increase by 2% for field office and HQ leases, and communications and utilities will increase by 25%, due to the Trusted Internet Connection and Networkx operating costs. Other services will increase by over 7% due to higher information services, financial systems and accounting services costs, and facilities protective services costs. Equipment costs will increase by 27% versus the extremely low levels of FY 2011 as equipment ages and needs to be replaced.

### Components of Budget Request

The following chart estimates how the requested FY 2012 funding will be distributed on a percentage basis:



Field office expenditures are almost entirely driven by the number of employees in the field offices. Below is a list of approximate staffing levels by headquarters and by field office. Staffing levels vary during the year due to hires, departures, and the management needs of the agency.

Headquarters	approximately 75-78 employees
Midwest Field Office	approximately 7 employees
Dallas Field office	approximately 8-9 employees
Oakland Field Office	approximately 9-10 employees
Washington DC Field Office	approximately 10-12 employees

## **FY 2012 Budget Request by Budget Object Class:**

For a detailed projection of the expenditures that will be required in each Budget Object Class (BOC) during FY 2012, see Budget Table 1 below.

<b>Budget Table 1</b>			
<b>U.S. Office of Special Counsel</b>			
<b>Budget Object Classification of Obligations: FY2010-FY2012</b>			
<i>(in thousands of dollars)</i>			
<b>Budget Object Classification of Obligations</b>	<b>FY2010 <i>Actual</i></b>	<b>FY2011* <i>(projected)</i></b>	<b>FY2012 <i>(projected)</i></b>
11.0 Personnel compensation	11,176	11,792	12,393
12.0 Civilian personnel benefits	2,974	3,170	3,352
13.0 Benefits to former personnel	0	23	24
21.0 Travel and transportation of persons	148	214	225
22.0 Transportation of things	22	20	21
23.1 Rental payments to GSA	1,557	1,764	1,795
23.3 Communications, utilities and misc. charges	203	113	150
24.0 Printing and reproduction	20	19	20
25.0 Other services	1,142	1,132	1,213
26.0 Supplies and materials	317	105	111
31.0 Equipment	568	143	182
32.0 Land & Structures	0	0	0
42.0 Tort Claims	0	0	0
<b>Total</b>	<b>18,127</b>	<b>18,495</b>	<b>19,486</b>

- The FY 2011 projection listed is based upon a full year level of the Continuing Resolution. The President's Budget level for OSC in FY 2011 is \$19,486,000.

### Notes concerning the above BOC line items:

#### **Object Class 11.0 Personnel Compensation increases:**

- 1) At the end of FY 2011, OSC will have a full political staff of four to five employees for the first time in several years.
- 2) There are now unprecedented levels of incoming cases, with new matters received by OSC increasing 27% in two years. OSC projects a staffing level of 109 FTE in FY 2011; however, we anticipate a staffing level of 112 FTE in FY 2012 is required to support the programs and stay current with increasing caseloads.
- 3) With the addition of the four to five political staff, OSC will be operating with 112 employees during all of FY 2012. No pay raise is projected for FY 2011 nor for FY 2012; however, some wage inflation is expected in FY 2011 and 2012, with 44 Within-Grade increases and Career Ladder promotions expected in FY 2011, and a slightly lower amount in FY 2012. Turnover is expected to remain low during this timeframe.

**Object Class 12.0 Civilian Personnel Benefits increases:** These increases are for employee benefits, to include Medicare, Federal Employees Group Life Insurance, and Health Benefits contributions, Old Age Survivors and Disability Insurance, and retirement plan contributions. This category also includes transit subsidies.

**Object Class 23.1 Rental Payments to GSA:** The increase in this category reflects the increased lease costs of the agency's Headquarters facility and tax increases, along with rent increases at the OSC field offices. OSC estimates that total agency rent will be approximately \$1.795 Million for FY 2012, based on projections provided by GSA.

**Object Class 23.3 Communications and Utilities:** The increase in this category reflects the planned migrations to the secure internet platform (TIC/Networx), and the resultant higher recurring/operating costs.

**Object Class 25.0 Other Services:** Costs of most outsourced and contracted services are expected to increase. OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. Sizeable increases are expected for information services, financial systems and accounting services, and Facilities Protective Services.

**Object Class 31.0 Equipment:** OSC had significant capital equipment purchases (servers) in FY 2010, however purchases are being kept to a minimum in FY 2011, and equipment replacements will be needed in FY 2012.

<b>Budget Table 2</b>			
<b>Analysis of Resources: FY2010-FY2012</b>			
<i>(in thousands of dollars)</i>			
Description	FY2010 (Actual)	FY2011* (Projected)	FY2012 (Projected)
Budget authority	18,495	18,495	19,486
Outlays	16,734	17,738	18,625
Approximate full-time equivalent employment (FTE) work years	103	109	112

\*The FY 2011 Budget authority projection is based upon a full year level of Continuing Resolution. The President's Budget level for OSC in FY 2011 is \$19,486,000.



## **PART 3 - BUDGET PROGRAMS AND PERFORMANCE PLAN**

### **Investigation and Prosecution of Prohibited Personnel Practices**

Unlike many other investigative entities or agencies, OSC must, as a general rule, conduct an inquiry after receipt of complaints alleging the commission of a prohibited personnel practice. The nature of the inquiry ranges from a screening analysis by the CEU to a full IPD field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which can involve different prohibited personnel practices. In all such matters, an OSC inquiry requires the review of, and a legal determination about, each allegation and prohibited personnel practice.

After a complaint is received by OSC, CEU attorneys and personnel management specialists conduct an initial review to determine whether it is within OSC's jurisdiction, and whether further investigation is warranted. CEU refers all matters stating a potentially valid claim to the IPD for further investigation. All such matters are reviewed first by the ADR Unit.

In selected cases that have been referred for further investigation, a trained OSC ADR specialist contacts the complainant and the employing agency to invite them to participate in the agency's voluntary ADR Program. If both parties agree, OSC conducts a mediation session, led by OSC trained mediators who have experience in federal personnel law. When mediation resolves the complaint, the parties execute a binding written settlement agreement. If mediation does not resolve the complaint, it is referred for further investigation, which would have been the normal course of action had the parties not attempted mediation.

The IPD conducts investigations to review pertinent records and to interview complainants and witnesses with knowledge of the matters alleged. Matters undergo legal review and analysis to determine whether they warrant corrective action, disciplinary action, or both.

If OSC believes a prohibited personnel practice has been committed and initiates discussions with an agency, the matter is often resolved through negotiation. Before OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB, the Special Counsel must make a formal request to the agency involved, reporting on its findings and recommendations. Only when the agency has had a reasonable period of time to take corrective action and fails to do so, may OSC proceed to petition the MSPB for corrective action. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the MSPB. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

In addition to rectifying the matter at issue, OSC litigation before the MSPB – whether by enforcement actions seeking to obtain corrective and/or disciplinary action, or by intervention or other participation in matters filed by others – often has the additional benefit of clarifying and expanding existing law. It also brings greater public attention to OSC's mission and work, a factor likely to increase the deterrent effect of its efforts.

During FY 2010, OSC received 3,950 new matters, including PPP, Hatch Act, and Disclosure matters (see Table 1). This was an increase of 6% over the number received in FY 2009.

<b>TABLE 1 Summary of All OSC Case Activity</b>					
	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Matters <sup>a</sup> pending at start of fiscal year	777	667 <sup>b</sup>	700	943	1,326
New matters received	2,718	2,880	3,116	3,725	3,950
Matters closed	2,814	2,842	2,875	3,337	3,912
Hatch Act advisory opinions issued	3,004	2,598	3,991	3,733	4,320
Matters pending at end of fiscal year	681	698	937	1,324	1,361

<sup>a</sup> “Matters” in this table includes prohibited personnel practice cases (including TSA matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases.

<sup>b</sup> Closure entries in the agency case tracking system were made in early FY 2007 for several cases completed during FY 2006.

## Resource Estimates

During FY 2011 the Investigation and Prosecution of Prohibited Personnel Practices will use approximately 55 FTE at a cost of approximately \$9,130,000. During FY 2012, we estimate the cost of the program will be approximately \$9,324,000 with 56 FTE. OSC’s largest program is devoted to the processing of PPP complaints. Of the total 3,950 new matters OSC received during FY 2010, 2,431 or 62% were new PPP complaints (see Table 2).

<b>TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity - Receipts and Processing<sup>a</sup></b>						
		<b>FY 2006</b>	<b>FY 2007<sup>b</sup></b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Pending complaints carried over from prior fiscal year		521	386	358	474	769
New complaints received <sup>c</sup>		1,805	1,970	2,089	2,463	2,431
<i>Total complaints:</i>		2,326	2,356	2,447	2,937	3,200
Complaints referred by CEU for investigation by IPD		143	125	135	169	220
Complaints processed by IPD		256	151	88 <sup>d</sup>	150	179
Complaints pending in IPD at end of fiscal year		155	136	185	201	250
Total complaints processed and closed (CEU and IPD combined)		1,930	1,996	1,971	2,173	2,341
Complaint processing times	Within 240 days	1,693	1,874	1,889	2,045	2,185
	Over 240 days	237	121	80	127	154
Percentage processed within 240 days		88%	94%	95%	94%	93%

<sup>a</sup> Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

<sup>b</sup> Numbers shown in this column in the FY 2008 annual report were recalculated due to an administrative error. Calculations are now performed with a new standardized query tool.

<sup>c</sup> “New complaints received” includes a few re-opened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

<sup>d</sup> In FY 2008, IPD not only processed 88 PPP complaints, but also handled 17 USERRA demonstration project cases and one Hatch Act case.

Table 3 below provides information regarding the numbers of corrective actions obtained in Prohibited Personnel Practice cases.

<b>TABLE 3 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints<sup>a</sup></b>						
		<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008<sup>b</sup></b>	<b>FY 2009</b>	<b>FY 2010</b>
Total favorable actions negotiated with agencies (all PPPs)	# of actions	52	29	58	62	96
	# of matters	48	29	33	53	76
Total favorable actions negotiated obtained (reprisal for whistleblowing)	# of actions	40	21	44	35	66
	# of matters	37	21	20	29	55
Disciplinary actions negotiated with agencies		4	5	3	5	13
Stays negotiated with agencies		8	7 <sup>c</sup>	4 <sup>d</sup>	9	15
Stays obtained from MSPB		1	3	0	0	0
Corrective action complaints filed with the MSPB		1	1	0	0	0
Disciplinary action complaints filed with the MSPB		0	0	3	0	0

<sup>a</sup> OSC used a newly developed standardized query tool to generate the numbers for FY 2008.

When applied backwards to the years FY 2004 through FY 2007, the query tool generated slightly different numbers for several of the figures. Differences are caused by entry of valid data into the case tracking system after annual report figures were compiled and reported, and by data entry errors in earlier years that have since been corrected.

<sup>b</sup> Actions itemized in this column occurred in matters referred by CEU and processed by IPD.

<sup>c</sup> Incorrectly reported as 4 in OSC's FY 2007 report to Congress due to administrative error.

<sup>d</sup> Represents two stays obtained in each of two cases.

## Alternative Dispute Resolution

Among the factors that determine “mediation-appropriate” cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the Complainant. Once a case has been identified as mediation appropriate by an Associate Special Counsel, an OSC Alternative Dispute Resolution Specialist contacts the parties to discuss the ADR Program. “Pre-mediation” discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process.

During fiscal year 2010, 74% of the agencies accepted initial mediation and there were six mediated resolutions (see Table 4).

<b>TABLE 4 ADR Program Activity - Mediation of Prohibited Personnel Practice Complaints</b>						
		<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Matters identified as mediation-appropriate		52	38	31	28	37
Initial acceptance rates by parties	Complainants	83%	71%	54%	61%	64%
	Agencies	59%	59%	94%	88%	74%
Mediated and other resolutions <sup>a</sup>		11	10	8	11	6
Resolution rate - OSC mediation program		55%	50%	50%	36%	50%

<sup>a</sup>Category includes complaints settled through mediation by OSC (including “reverse-referrals” - i.e., cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC mediation process, and were then resolved by withdrawal of the complaint, or through mediation by an agency other than OSC.

Mediation settlement outcomes in OSC’s Mediation Program vary, depending on the interests of the parties. Monetary recovery includes retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recovery, the benefits received by complainants in ADR include revised performance appraisals, reinstatement of employment, and transfers to better working environments.

### **Goals and Results – Prohibited Personnel Practices**

OSC’s Strategic Objective 1 is to protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the prohibited personnel practices. The following tables describe the three Performance goals supporting this strategic objective.

<b>Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: <u>Percentage of cases processed in less than 240 days.</u></b>
<b>FY 2006 TARGET</b>	85%
<b>FY 2006 RESULTS</b>	89%
<b>FY 2007 TARGET</b>	92%
<b>FY 2007 RESULTS</b>	94%
<b>FY 2008 TARGET</b>	92%
<b>FY 2008 RESULTS</b>	95%
<b>FY 2009 TARGET</b>	92%
<b>FY 2009 RESULTS</b>	94%
<b>FY 2010 TARGET</b>	94%
<b>FY 2010 RESULTS</b>	93%
<b>FY 2011 TARGET</b>	94%
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	94%
<b>FY 2012 RESULTS</b>	

OSC missed its timeliness target by a percentage point for PPP case processing in FY 2010. This is due to the 30% increase in cases referred by CEU to IPD for investigation. Full field investigations often take longer than 240 days due to factors outside of OSC's control, such as extensions of time requested by the agency under investigation, and the timeframes associated with litigation. This resulted in those cases taking longer, as well as in resources being directed to perform the additional investigatory work. We are maintaining 94% as the target in FY 2012. We do not believe that raising the target above 94% would be realistic.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS</b>	
<b>PPP Enforcement Mission</b>	<b>Prohibited Personnel Practices Cases</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# of settlements achieved + # of successful litigations) / (# meritorious cases)</b>
<b>FY 2006 TARGET</b>	99%
<b>FY 2006 RESULTS</b>	100%
<b>FY 2007 TARGET</b>	99%
<b>FY 2007 RESULTS</b>	100%
<b>FY 2008 TARGET</b>	100%
<b>FY 2008 RESULTS</b>	100%
<b>FY 2009 TARGET</b>	100%
<b>FY 2009 RESULTS</b>	100%
<b>FY 2010 TARGET</b>	100%
<b>FY 2010 RESULTS</b>	100%
<b>FY 2011 TARGET</b>	100%
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	
<b>FY 2012 RESULTS</b>	100%

OSC did not lose any cases in FY 2010 in PPP litigation before the board. Normally, agencies will settle the matter when OSC outlines the nature of the prohibited personnel practices that have been committed. We are maintaining the target of 100% for FY 2012.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.</b>
<b>FY 2006 TARGET</b>	5
<b>FY 2006 RESULTS</b>	6
<b>FY 2007 TARGET</b>	5
<b>FY 2007 RESULTS</b>	3
<b>FY 2008 TARGET</b>	5
<b>FY 2008 RESULTS</b>	5
<b>FY 2009 TARGET</b>	5
<b>FY 2009 RESULTS</b>	11
<b>FY 2010 TARGET</b>	5
<b>FY 2010 RESULTS</b>	5
<b>FY 2011 TARGET</b>	5
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	5
<b>FY 2012 RESULTS</b>	

During FY 2010, five agencies were certified or re-certified under OSC's 2302(c) program. We are not increasing the FY 2012 target for certifying agencies because of decreased interest from agencies involved in the program. We note that the statutory provision upon which OSC's certification program is based - 5 USC § 2302(c) - does not provide an enforcement tool to require agencies to become certified.



## **Hatch Act Enforcement Program**

OSC is responsible for enforcing the Hatch Act, including investigating and prosecuting complaints alleging violations of the Act, and providing advisory opinions on the Act's requirements. The Hatch Act Unit is also responsible for a nationwide program that provides legal advice on the Hatch Act to federal, state and local employees and the public at large. Specifically, the Hatch Act Unit has the unique responsibility of providing Hatch Act information and legal advice to White House staff, Congressional staff, the national press, senior management officials throughout the federal government, and state and local government officials. When provided to individuals, the advisory opinions enable them to determine whether they are covered by the Act, and whether their contemplated activities are permitted under the Act.

The Hatch Act Unit also enforces compliance with the Act by receiving complaints alleging Hatch Act violations, conducting preliminary inquiries into complaint allegations and, (where warranted) further investigating allegations or referring the complaints to OSC's IPD (for further investigation). Depending on the severity of the violation, the Hatch Act Unit will either issue a warning letter to the employee, attempt to informally resolve the violation, or prosecute the case before the MSPB.

A string of Hatch Act cases involving high-profile employees over the last three years has resulted in significant national press coverage. There is now a very heightened awareness of the Hatch Act among Federal employees. In FY 2010, the unit received an all time high of 526 complaints, an increase of 6% over FY 2009 and 20% over FY 2008. In FY 2010, OSC's Hatch Act Unit achieved 55 corrective actions, including 28 withdrawals from partisan races and 26 resignations from covered employment (see **Table 5**).

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program; the unit conducted over 50 outreach presentations in FY 2009 to various federal agencies and employee groups concerning federal employees' rights and responsibilities under the Act. Many of these programs involved high-level agency officials. Also, the unit attempted to informally resolve as many ongoing Hatch Act violations as possible without resorting to litigation. As usual, advisories concerning partisan activity surrounding state and local elections have accounted for a fair amount of OSC's work this fiscal year.

### **Resource estimates:**

During FY 2011, the Hatch Enforcement Program will use approximately 15 FTE at a cost of approximately \$2,475,000. During FY 2012, we estimate the cost of this program to be \$2,490,000 for 15 FTE.

<b>TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity</b>						
		<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Formal written advisory opinion requests received		237	194	292	227	351
Formal written advisory opinions issued		230	176	275	226	320
Total advisory opinions issued <sup>a</sup>		3,004	2,598	3,991	3,733	4,320
New complaints received <sup>b</sup>		299	282	445	496	526
Complaints processed and closed		266	252	264	388	535
Warning letters issued		76	68	70	132	163
Corrective actions taken by cure letter recipients:	Withdrawal from partisan races	9	18	13	15	28
	Resignation from covered employment	22	6	17	6	26
	Other	2	1	2	3	1
	Total:	33	25	32	24	55
Disciplinary action complaints filed with MSPB		6	1	3	10	7
Disciplinary actions obtained (by negotiation or ordered by MSPB) <sup>c</sup>		10	5	11	5	10
Complaints pending at end of fiscal year		112	142	323	430	422

<sup>a</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<sup>b</sup> Includes cases that were re-opened.

<sup>c</sup> Numbers revised for fiscal years 2005 - 2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases in past reports. As a result, the numbers have increased from what was previously reported (except for FY 2004, which remained the same).

### **Goals and Results - Hatch Act Program**

OSC's Strategic Objective 2 is to protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act. The tables below describe the three operational goals supporting this strategic objective.

<b>Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING</b>			
<b>HATCH ACT MISSION</b>	<b>HATCH ACT WRITTEN ADVISORY OPINIONS</b>	<b>HATCH ACT ORAL &amp; EMAIL ADVISORY OPINIONS</b>	<b>HATCH ACT COMPLAINTS</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.</b>	<b>Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five business days</b>	<b>Indicator C: Percentage of matters resolved in less than 365 days.</b>
<b>FY 2007 TARGET</b>	80%	99%	70%
<b>FY 2007 RESULTS</b>	91%	99%	92%
<b>FY 2008 TARGET</b>	85%	99%	80%
<b>FY 2008 RESULTS</b>	60%	100% oral	88%
		95% email	
<b>FY 2009 TARGET</b>	90%	99% oral	85%
		95% email	
<b>FY 2009 RESULTS</b>	82%	99% oral	84%
		98% email	
<b>FY 2010 TARGET</b>	90%	99% oral	85%
		95% email	
<b>FY 2010 RESULTS</b>	90%	99% oral	71%
		99% email	
<b>FY 2011 TARGET</b>	85%	99% oral	85%
		95% email	
<b>FY 2011 RESULTS</b>			
<b>FY 2012 TARGET</b>	90%	99% oral	85%
		98% email	
<b>FY 2012 RESULTS</b>			

During FY 2010, OSC achieved 100% favorable outcomes in meritorious Hatch Act cases, exceeding the target of 97%. We are increasing the FY 2012 target to 100%.

Indicator A: During FY 2010, OSC issued formal written advisory opinions 90% of the time within 120 days. This was a significant performance achievement given the 42% increase in the number of these formal advisory opinions.

Indicator B: During FY 2010 OSC achieved its target of 99% oral advisory opinions and exceeded its target of 95% e-mail advisory opinions issued within 5 business days. The FY 12 target for oral advisory opinions has been maintained, since a higher target would be unrealistic. The target for e-mail advisory opinions has been increased to 98%.

Indicator C: During FY 2010, OSC did not meet its target of resolving 85% of matters within 365 days, due to the following reasons: a continued and record level rise in both caseload and advisory opinions; required prioritization towards handling important cases; an increase in the complexity of cases; more litigation (which results

in redirected resources and longer case processing time). For these reasons, many cases stayed open longer on average. Despite not meeting the goal, it is important to note that overall productivity as defined by the number of complaints processed and closed increased by 72%. These trends are likely to continue into FY 11 and FY 12. However, we are keeping the target goal at 85%; additional Hatch Act staff is being added in FY 11 and efforts are being redoubled towards meeting this important goal.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS</b>	
<b>HATCH ACT MISSION</b>	<b>HATCH ACT CASES</b> See comment 1.
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in meritorious cases</b>
<b>FY 2006 TARGET</b>	90%
<b>FY 2006 RESULTS</b>	97%
<b>FY 2007 TARGET</b>	90%
<b>FY 2007 RESULTS</b>	97%
<b>FY 2008 TARGET</b>	97%
<b>FY 2008 RESULTS</b>	96%
<b>FY 2009 TARGET</b>	97%
<b>FY 2009 RESULTS</b>	100%
<b>FY 2010 TARGET</b>	97%
<b>FY 2010 RESULTS</b>	100%
<b>FY 2011 TARGET</b>	97%
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	100%
<b>FY 2012 RESULTS</b>	

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>HATCH ACT MISSION</b>	<b>HATCH ACT OUTREACH VISITS</b>	<b>HATCH ACT SECTION OF OSC WEBSITE</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)</b>	<b>Indicator B: Number of new advisory complex opinions added every month to the website. (complex opinions are also posted in the form of Q&amp;A)</b>
<b>FY 2006 TARGET</b>	90%	One
<b>FY 2006 RESULTS</b>	96%	One
<b>FY 2007 TARGET</b>	90%	One
<b>FY 2007 RESULTS</b>	100%	One
<b>FY 2008 TARGET</b>	95%	One
<b>FY 2008 RESULTS</b>	98%	One
<b>FY 2009 TARGET</b>	95%	One
<b>FY 2009 RESULTS</b>	99%	One
<b>FY 2010 TARGET</b>	95%	One
<b>FY 2010 RESULTS</b>	93%	One
<b>FY 2011 TARGET</b>	97%	One
<b>FY 2011 RESULTS</b>		
<b>FY 2012 TARGET</b>	97%	One
<b>FY 2012 RESULTS</b>		

Indicator A: During FY 2010, OSC's Hatch Act Unit provided training to federal, state, and local agencies 93% of the time when invited by sponsoring organizations, missing the 95% target. Two trainings had to be declined this year, due to scheduling and critical Hatch Act program requirements. OSC recognizes the importance of outreach and is maintaining a target of 97% for FY 2012, despite an expected increase in numbers of cases and advisory opinions (on top of already elevated workload levels) in the Hatch Act program.

Indicator B: OSC met its goal of posting one complex advisory opinion to the OSC web site on a monthly basis. We are maintaining this goal in FY 2012, posting more opinions would detract from the importance of the cases selected for posting.

### **Whistleblower Disclosure Channel Program**

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may, under 5 U.S.C. §1213(a), disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. At present, the Disclosure Unit staff is comprised of the Chief, ten attorneys and one paralegal. The Disclosure Unit is responsible for reviewing the information submitted by whistleblowers, and advising the Special Counsel whether it shows that there is a substantial likelihood that the type of wrongdoing described in § 1213(a)

has occurred or is occurring. Where a substantial likelihood determination is made, the Special Counsel must transmit the disclosure to the head of the relevant agency for action. The agency is required to conduct an investigation and submit a report to OSC describing the results of the investigation and the steps taken in response to the investigative findings. Under § 1213(e), the whistleblower is also provided with a copy of the report for comment. The Special Counsel is then required to review the report in order to determine whether it meets the requirements of the statute and its findings appear reasonable. The report is then forwarded to the President and appropriate Congressional oversight committees.

In the Disclosure Unit, 961 new matters were received in FY 2010, a 33% increase over the previous fiscal year. During FY 2010, the unit referred 24 matters to agency heads for investigation under § 1213(c). (**See Table 6**). The Disclosure Unit's more complex cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to fully complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and Disclosure Unit attorneys and the Special Counsel must review the report to determine whether it contains the information required by statute, its findings appear reasonable, and to prepare any comments the Special Counsel may have on the report.

This year, for the sake of brevity, we are not including a representative sample of cases that have been referred by the Special Counsel to the heads of the agencies pursuant to 5 U.S.C. § 1213(c) and closed after receipt and review of the agency report. We are also not including summaries of cases that are presently under investigation by agency heads, though all of these summaries are available. In many cases, OSC's efforts have resulted in significant media coverage and reform efforts.

<b>TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions<sup>a</sup></b>						
		<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Pending disclosures carried over from prior fiscal year		110	69	84	128	125
New disclosures received		435	482	530	724	961
<i>Total disclosures</i>		545	551 <sup>b</sup>	614	852	1,086
Disclosures referred to agency heads for investigation and report		24	42	40	46	24
Referrals to agency IGs		10	11	9	10	2
Agency head reports sent to President and Congress		24	20	25	34	67
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	21	19	22	30	62
	<i>Disclosures unsubstantiated</i>	3	1	3	4	5
Disclosure processing times	Within 15 days	203	285	256	394	555
	Over 15 days	275	182	232	333	451
Percentage of disclosures processed within 15 days		42%	61%	52%	54%	55%
Disclosures processed and closed		478	467	488	727	1,006

<sup>a</sup> Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

<sup>b</sup> Incorrectly reported as 599 in OSC's FY 2007 report to Congress.

### Resource Estimates:

During FY 2011, the Whistleblower Disclosure Unit will use approximately 12 FTE at a cost of \$2,040,000. During FY 2012, we estimate the cost of the program will be \$2,223,000 with an increase of one FTE.

### Goals and Results - Whistleblower Disclosure

OSC's Strategic Objective 3 is to promote public safety and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information. The following tables below describe the two operational goals supporting this strategic objective.

<b>Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame</b>
<b>FY 2006 TARGET</b>	50%
<b>FY 2006 RESULTS</b>	42%
<b>FY 2007 TARGET</b>	50%
<b>FY 2007 RESULTS</b>	61%
<b>FY 2008 TARGET</b>	50%
<b>FY 2008 RESULTS</b>	52%
<b>FY 2009 TARGET</b>	50%
<b>FY 2009 RESULTS</b>	54%
<b>FY 2010 TARGET</b>	50%
<b>FY 2010 RESULTS</b>	55%
<b>FY 2011 TARGET</b>	50%
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	54%
<b>FY 2012 RESULTS</b>	

OSC's Disclosure Unit exceeded its target of 50% during FY 2010, despite a 33% increase in Whistleblower Disclosure cases. We are increasing the target to 54% for FY 2012.



<b>Goal 2: TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.</b>
<b>FY 2006 TARGET</b>	7%
<b>FY 2006 RESULTS</b>	8%
<b>FY 2007 TARGET</b>	7%
<b>FY 2007 RESULTS</b>	10%
<b>FY 2008 TARGET</b>	7%
<b>FY 2008 RESULTS</b>	6%
<b>FY 2009 TARGET</b>	7%
<b>FY 2009 RESULTS</b>	7%
<b>FY 2010 TARGET</b>	7%
<b>FY 2010 RESULTS</b>	2%
<b>FY 2011 TARGET</b>	7%
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	5%
<b>FY 2012 RESULTS</b>	

During FY 2010, 2% of the total disclosures were referred to the agency head. The quality of the incoming disclosures is the driver of the percent referred to the agency head. They are required to meet an objective standard in order to be referred. FY 2009 had multiple Federal Aviation Administration (FAA) cases, which number dropped off in FY 2010, due to less media and congressional attention on the subject. In FY 2012, the target has been set at 5% which we expect to be a more realistic level.

### **USERRA Enforcement and Prosecution Program**

With the enactment of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Congress expanded OSC's role in enforcing federal employment rights. USERRA protects the civilian employment and reemployment rights of those who serve the nation in the Armed Forces, including the National Guard and Reserves, and other uniformed services by prohibiting employment discrimination due to past, present, or future uniformed service (including initial hiring, promotion, retention, or any benefit of employment) and providing for prompt reemployment of service members in their civilian jobs after they return from military duty. Congress intends for the federal government to be a "model employer" under USERRA.

OSC plays a critical role in enforcing USERRA by providing representation, when warranted, before the MSPB and the U.S. Court of Appeals for the Federal Circuit to service members whose USERRA complaints involve federal executive agencies. From 2005 through 2007, Congress temporarily expanded OSC's role in USERRA enforcement under a demonstration project. This demonstration project has been reestablished by Congress starting in FY 2011 and will continue into FY 2014. The Demonstration Project is described further below.

## **USERRA Referral Cases**

Under USERRA, a claimant alleging a violation by a federal executive agency may either file an appeal with the MSPB or a complaint with the Department of Labor, Veterans' Employment and Training Service (VETS). If the claimant chooses to file a complaint with VETS, VETS must investigate and attempt to resolve the complaint. If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB, regardless of merit. If, after reviewing the complaint and investigative file, and conducting any necessary follow-up investigation, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may act as the claimant's attorney and initiate an action before the MSPB.

During FY 2010, OSC received thirty-two USERRA complaints referred from VETS.

## **Educating the Federal Sector and Preventing Future Violations**

In FY 2010, OSC continued its education and outreach efforts by conducting USERRA seminars for the Federal Employment Lawyers Group and at national conferences for Army and Air Force labor attorneys. OSC also maintained e-mail and telephonic hotlines to provide technical assistance to employees and employers with USERRA questions.

## **USERRA Demonstration Project**

OSC's role in enforcing USERRA expanded with September passage of the Veterans Benefit Act of 2010, which enhances protections for service members. Section 105 of this bill authorizes a Demonstration Project for referral of certain claims against federal agencies pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to OSC. The Demonstration Project is scheduled to start in April, 2011, and run through FY 2014.

Existing law requires that USERRA complaints against federal agencies must first be filed with the U.S. Department of Labor, Veterans' Employment and Training Service (DOL-VETS) for investigation and attempted resolution. If DOL-VETS are unable to resolve the complaint, the claimant may request referral to OSC for possible representation before the U.S. Merit Systems Protection Board (MSPB). The new legislation recognized the inefficiencies in the system (which splits the "investigative" and "enforcement" responsibilities between two agencies), as well as OSC's extensive expertise and experience in investigating and resolving other federal employment claims (e.g., prohibited personnel practices, including reprisal for whistleblowing). It established a 36-month USERRA Demonstration Project under which OSC receives half of all federal USERRA complaints for both comprehensive investigation of USERRA claims (plus any related federal employment violations) and possible enforcement before the MSPB (eliminating the two-part process for such claims).

OSC has every reason to believe the results of this Demonstration Project will be similar to a previous demonstration project, in which OSC achieved a high rate of favorable resolutions for service members in a timely manner by having a single, centralized entity handle their cases from beginning to end.

OSC welcomes the opportunity afforded by H.R. 3219 to expand its role in protecting the civilian employment rights of those who serve our nation.

## Resource Estimates

During FY 2011, the USERRA program, to include the Documentation Project, will use approximately 3 FTE at a cost of \$495,000. During FY 2012, we estimate the cost of the total program will be \$664,000 with an increase of one FTE.

## Goals and Results – USERRA Enforcement and Prosecution Program

OSC's Strategic Objective 4 is to protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act. The tables below describe the three operational goals supporting this strategic objective.

<b>TABLE 7 Summary of USERRA Referral and Litigation Activity<sup>a</sup></b>				
	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Pending referrals carried over from prior fiscal year	3	3	5	7
New referrals received from VETS during fiscal year	4	15	41	32
Referrals closed	4	13	39	27
Referrals closed with corrective action	0	2	4	0
Referrals closed with no corrective action	4	11	35	27
Referrals pending at end of fiscal year	3	5	7	12
Litigation cases carried over from prior fiscal year	0	1	1	1
Litigation cases closed	0	1	0	1
Litigation closed with corrective action	0	0	0	1
Litigation closed with no corrective action	0	1	0	0
Litigation pending at end of fiscal year	1	1	1	1

<sup>a</sup> This table has been reorganized, and some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

<b>Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING</b>	
<b>USERRA MISSION</b>	<b>USERRA Referral (RE) Cases</b>
<b>PERFORMANCE INDICATORS</b>	<b><u>Indicator A:</u> Average number of days in which the case is settled, closed or a decision to litigate is made.</b>
<b>FY 2007 TARGET</b>	75 days
<b>FY 2007 RESULTS</b>	33 days
<b>FY 2008 TARGET</b>	75 days
<b>FY 2008 RESULTS</b>	110 days
<b>FY 2009 TARGET</b>	80% in 60 days
<b>FY 2009 RESULTS</b>	75% in 60 days
<b>FY 2010 TARGET</b>	80% in 60 days
<b>FY 2010 RESULTS</b>	79% in 60 days
<b>FY 2011 TARGET</b>	80% in 60 days
<b>FY 2011 RESULTS</b>	
<b>FY 2012 TARGET</b>	80% in 60 days
<b>FY 2012 RESULTS</b>	

Indicator A: OSC did not meet its FY 2010 target by one percentage point, due to a number of cases received late in the Fiscal Year that required additional investigation by OSC or in which OSC was attempting to negotiate corrective action on behalf of the service member.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful meditations + # of settlements achieved + # of successful litigations) / (# meritorious cases)</b>	<b>Indicator B: # of “test cases” filed</b>
<b>FY 2006 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2006 RESULTS</b>	100%	0
<b>FY 2007 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2007 RESULTS</b>	100%	1
<b>FY 2008 TARGET</b>	95%	Inappropriate to set a specific target
<b>FY 2008 RESULTS</b>	97%	1
<b>FY 2009 TARGET</b>	99%	Inappropriate to set a specific target
<b>FY 2009 RESULTS</b>	100%	0
<b>FY 2010 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2010 RESULTS</b>	100%	1
<b>FY 2011 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2011 RESULTS</b>		
<b>FY 2012 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2012 RESULTS</b>		

Indicator A: OSC was successful in 2 out of 2 meritorious cases during FY 2010.

Indicator B: There was 1 test case filed in FY 2010 that falls in this category.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})</b>	<b>Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})</b>
<b>FY 2006 TARGET</b>	90%	50%
<b>FY 2006 RESULTS</b>	NA	100%
<b>FY 2007 TARGET</b>	90%	50%
<b>FY 2007 RESULTS</b>	100%	100%
<b>FY 2008 TARGET</b>	90%	75%
<b>FY 2008 RESULTS</b>	100%	NA
<b>FY 2009 TARGET</b>	90%	75%
<b>FY 2009 RESULTS</b>	100%	NA
<b>FY 2010 TARGET</b>	100%	75%
<b>FY 2010 RESULTS</b>	100%	100%
<b>FY 2011 TARGET</b>	100%	75%
<b>FY 2011 RESULTS</b>		
<b>FY 2012 TARGET</b>	100%	100%
<b>FY 2012 RESULTS</b>		

Two outreaches were requested in FY 2010; one paid by the requesting agency and one by OSC. Both were accomplished by the USERRA Unit.

## **OSC's Outreach Program**

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces in consultation with the OSC about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act.

In an effort to assist agencies in meeting the statutory requirement, in FY 2002, OSC designed and created a five step educational program, the 2302(c) Certification Program. This program gives guidance to agencies and provides easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligation. Agencies that complete the program receive a certificate of compliance from OSC.

In an effort to promote OSC's mission and programs, OSC provides formal and informal outreach sessions, including making materials available on the agency web site. During FY 2010, OSC employees spoke at approximately 57 events nationwide, including American Bar Association events, agency training sessions, conferences and meetings. Several OSC employees presented at the Government Ethics Conference this year.

Finally, OSC has continued its policy of issuing press releases when OSC files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Many of these cases generate considerable press coverage, which contributes to federal employees' and managers' awareness about the merit system protections enforced by OSC.

## **PART 4 – MANAGEMENT PERFORMANCE**

### **Strategic Management of Human Capital**

OSC's human capital strategy is aligned with its mission, goals, and organizational objectives. It is integrated into the budget and strategic plans, and is consistent with human capital guidance from OPM and OMB. OSC has internal accountability systems to ensure effective merit-based human resource management as described below.

OSC uses existing personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a fairly extensive telework program. In the last two years, OSC has developed and implemented several innovative benefits for its employees, including a successful student loan repayment / employee retention program in which 27 employees participate, and a fitness program for employees. OSC's performance management systems allow managers to differentiate between high and low performers through the use of appropriate incentives and consequences.

The agency is addressing gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, and by hiring additional personnel. OSC also has a highly developed cross-training program that enables employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas of departing employees through extensive exit interviews. This information is used by senior managers to refine and improve work processes.

Performance plans are in place for SES members and managers that link to the agency's mission and to strategic goals that are in place for the individual divisions. OSC also now has measurable finite performance goals in place for each employee.

### **Hiring Reform**

In 2009 - 2010, the Office of Personnel Management (OPM) developed, in concert with the Chief Human Capital Officers, an End-to-End Hiring Road map that focused on reducing the time it takes to hire an applicant, and making the application process easier and more readily understood by potential applicants. To accomplish these goals at OSC, the agency established a senior level SWOT (Strengths, Weaknesses, Opportunities, Threats) Team to evaluate OSC's internal processes. The team had two senior human resource professionals and three hiring managers. The OSC SWOT Team, in conjunction with OPM, evaluated the current hiring process from the time a manager identifies a need to hire until the selected person begins working for the agency.

As part of this review, the SWOT Team reviewed the job announcements for attorneys, investigators, and human resources specialists to ensure they were written in plain language and reduced the job announcement to four pages. The SWOT Team utilized USAJOBS exclusively to allow applicants to apply on-line and upload resumes and other required documents to speed up the application process. Additionally, using USAJOBS once again, the SWOT team developed guidelines on how to notify applicants of their applicant status at four points throughout the hiring process: when the application is received, when the application is assessed for qualifications, when the applicant is referred to the selecting official (or not), and when the applicant is selected (or not). OSC managers are actively involved in the entire hiring process, which includes targeted recruitment, drafting job announcements, interviewing and selecting applicants.



## **Improved Financial Performance**

OSC has continued its success in receiving unqualified audit opinions, with the receipt of another clean opinion this Fiscal Year. A competitively selected audit firm evaluated OSC's financial statements for FY 2009. The auditor spent time at OSC headquarters and with the Department of Interior's National Business Center (NBC) personnel in Denver who currently perform the accounting, payments, travel system operation, and financial system operations and maintenance functions for OSC. The audit resulted in an unqualified audit opinion on our annual financial statements, similar to the results of audits for the past five fiscal years, which was the inception of formal Financial statement Audits at OSC.

As mentioned above, OSC contracts out certain work under an interagency agreement. OSC was involved in the effort to design the processes used for its accounting system, and to design specific customized reports that reflect exactly the information most helpful to OSC in managing its funds. Contracting these functions out has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. NBC routinely provides financial reports to OSC, and provides a detailed financial review every quarter. NBC also provides current financial information on day-to-day operations for payroll, procurement, and travel, as needed by OSC.

As a small agency without an Inspector General, OSC generally submits a combined Inspector General (IG) Act and Federal Manager's Financial Integrity Act report each October. OSC relies on audits and other reviews of NBC operations by the OIG and the office of the Chief Financial Officer in the National Business Center, as well as information received directly from NBC, for information about any significant issues relating to the services provided to OSC. NBC has a formal Management and Control and Compliance program, to include OMB Circular A123 audits, A123 Accounting Transactions testing, SAS70 Type II audits, and Financial Statements Audits. Further, they conduct Information Technology Audits such as Federal Information Security Management Act, Internal Controls Reviews, as well as other audits.

## **Competitive Sourcing**

OSC is a small agency, with a highly specialized inherently government mission. Eighty four percent of its FTE perform inherently governmental work, and 16% of its FTE are considered commercial in nature. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, the position activity total is 10 FTE or less.

The interagency agreement with the NBC includes the following services: budget accounting and budget execution, accounting services, procurement system hosting, and travel management. In addition, the OSC conducted a "Best Interest Determination" in FY 2010 and the results showed it would be advantageous for the procurement function to be outsourced to NBC as well, which has been accomplished. OSC will review NBC interagency agreements annually to confirm the agreement is meeting OSC's needs. OSC also has an interagency agreement with the National Finance Center of the Department of Agriculture to perform payroll/personnel processing functions.

## **Expanded Electronic Government and other Information Technology Initiatives**

OSC provides one-stop service for those who wish to file a complaint or disclosure, or request a Hatch Act advisory opinion. Hatch Act advisory opinions may be solicited through our web site. A person can file a Prohibited Personnel Practices complaint online, which is the most common channel for PPP complaints to be received by the agency. A person can also make a complete Whistleblower Disclosure online. Those who wish to communicate with a knowledgeable OSC staffer through one of the agency's telephone hot lines will find the

relevant information on the OSC web site. OSC's web site is linked to USA.gov, as well as other agency web sites: the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics, (among many others). OSC's Information Technology Branch (ITB) staff are continually improving OSC's web site. In FY 2010, the osc.gov web site was totally redesigned to become more user friendly and better organized. User sessions on OSC's web site have continued to grow. During FY 2010, the total number of user sessions was 1,162,504.

To promote the use of GreenIT and to shift our IT investments to more efficient computing platforms and technologies, a major effort in FY 2011 and FY 2012 will be the implementation of the Federal Data Center Consolidation Initiative. ITB is constantly enhancing the OSC's case tracking system to meet the users' ever changing requirements. ITB will continue migrating the entire agency to the new standard laptop setup and implementing two factor authentications for local area network access as well as for remote Citrix access. ITB will also migrate Citrix to a 64-bit computing environment, and deploy 64-bit blade servers along with a D2D2T backup solution, which will enable OSC to phase out obsolete backup tape drives.

In the Homeland Security Presidential Directive 12 (HSPD-12) initiative, 100% of our users are using HSPD-12 compliant PIV cards to gain access to our facility in the Headquarters, and our Detroit office will be fully operational with the same setup by the middle of FY 2011, and we plan to complete the entire HSPD-12 physical access project within a year. Planning and Analysis is ongoing towards implementation of the logical access phases of HSPD-12 in FY 2012.

In the area of Cybersecurity, we are currently working with our Managed Trusted IP Service (MTIPS) provider to begin the implementation of our Trusted Internet Connection (TIC) solution. We expect to finish the first phase of the project by the middle of the FY 2011.

For the Networx transition initiative we are more than 60% transitioned to Networx. We expect to have all FTS2001 telecommunication services transitioned to Networx by late FY 2011.

## **Open Government**

OSC has met the major requirements of the Open Government initiative. After consultation, we determined the new sets of data which could be posted to our web site. This data gives a clearer picture of three elements: our printing expenditures per fiscal year, our training expenditures per fiscal year, and our staffing levels (FTE) per month. Our Open Government web page has been completed, which is located at <http://www.osc.gov/opengov.htm>. The web page provides easy access to key information and other reports and data. A link is on the page to receive feedback from the public via the web site. Communications have been sent internally within OSC in order to receive input and ideas from OSC employees on Open Government. OSC's Open Government initiative is an ongoing effort, our plan and data sets will be reviewed continuously and improvements put into place over time.

## **Green Government**

President Obama issued the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance (E.O. 13514), signed on October 5, 2009. In order to manage their greenhouse gas (GHG) emissions, Federal Agencies must have a consistent methodology for measuring such emissions. The Executive Order requires Federal agencies to establish and report a comprehensive inventory of absolute greenhouse gas emissions to the CEQ and the Office of Management and Budget. In addition, Sustainability plans must be developed and reported on annually by each agency.

The Office of Special Counsel completed its Sustainability Plan, with overall reduction targets of 7%. Also,

based on the template designed by the Council on Environmental Quality in cooperation with OMB, the OSC reported its results for the Federal inventory reporting requirements and calculation methodologies on May 28, 2010. OSC's reduction of Scope 3 Emissions is based on a reduction of purchased energy, where the use of new, more efficient servers by IT will reduce our electricity costs; a reduction of travel through the use of web-based technology for interviews, meetings and other operations; and the increased promotion of employee telecommuting.

In regard to continuity of operations, ITB will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. In FY 2011 OSC plans to evaluate an initiative that will allow mirroring of its network to a backup geographic location in Dallas, Texas. This redundancy will provide additional safety and faster recovery time in the event of a debilitating event, agency functions and vital records will be further safeguarded. Implementation will be in 2012. In FY 2013, OSC plans to further refine and test its COOP and perform disaster recovery testing based upon the new location.

### **Improving Employee Satisfaction and Wellness**

Over the past several years, OSC has implemented several key programs to enhance employee satisfaction and wellness. OSC implemented a Student Loan Repayment Program to enhance recruitment and retention efforts for attorneys; initiated a cost share (50/50) program for YMCA membership to encourage employees to have a healthier lifestyle and stay fit; conducted routine health checks and assessments by a health unit nurse to assist employees in maintaining proper health care; and instituted a program to pay for professional credentials (bar membership fees) for attorneys. Additionally, management conducted another Human Capital Survey of the workforce in 2009. Those results were compared with the last survey to identify areas in which the agency scores below the national average and any other areas that may be in need of attention from management.

As part of the Work-Life Initiative, the OSC SWOT Team will continue to assess current wellness activities, and make recommendations for future enhancements to the total wellness program if needed.

### **Program Reviews**

OSC management currently reviews the performance of its programs on an ongoing basis, and strives to continuously improve its case processing in all its program areas. OSC is currently developing plans to institute formal quarterly reviews of the operational programs, which will involve senior management. At these reviews program goals and targets will be closely monitored, an operational dashboard developed to include key metrics which will be tracked, and issues will be identified and resolved. We anticipate these reviews will help remove obstacles, share best practices, and ultimately improve case-processing and promote more effective use of resources. These reviews will not be static. As better tools, information and data are identified, we will adjust the program review framework accordingly.

## Appendix

### Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (the Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints from federal employees alleging prohibited personnel practices; (2) receives and investigates complaints regarding the political activity of federal employees and covered state and local employees and provides advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3) receives disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, files petitions for corrective and or disciplinary action with the Board in prohibited personnel practice and Hatch Act cases.

In 1989, Congress enacted the Whistleblower Protection Act (WPA). Under the WPA, OSC became an independent agency within the Executive Branch, with continued responsibility for the functions described above. The WPA also enhanced protections for employees who allege reprisal for whistleblowing, and strengthened OSC's ability to enforce those protections.<sup>1</sup>

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.<sup>2</sup> The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted. USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on past, present, or future military service; requires prompt reinstatement in civilian employment upon return from military service; and, prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agencies (i.e., where a federal agency is the civilian employer).<sup>3</sup>

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. Further, the Reauthorization Act broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies inform employees of their rights and remedies under the Whistleblower Protection Act in consultation with OSC.

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>4</sup> which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the Board. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the Board.

## Endnotes

1. Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).
2. Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.
3. Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et seq. The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).)
4. Public Law 107-71 (2001).















